IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 591 OF 2006

1. Sam Dastoor,
2. Meenal Baghel,
3. Faye Remedios. ...Petitioners

V/s.

State of Maharashtra. ...Respondent

Mr.Dimple K. Shah for Petitioners.
Mr.S.S. Tatkare, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 14, 2006

P.C. :-

. Heard learned Counsel for the petitioners and learned APP for the State.

. This is an application for anticipatory bail filed by the petitioners as they have an apprehension that they are likely to be arrested in connection with different complaints which are registered by the Azad Maidan and Bandra Police Stations and Vahsi Police Station. The said complaints have been filed for the offence punishable under Section 295(A) read with Section 153(A) of the IPC.

2. The brief facts which are relevant for the purpose of deciding this application are as under :-

. The petitioner no.1 is the the Printer and Publisher of Bennett Coleman & Company Limited which is known as The Times of India Group of Newspapers. The Petitioner No.2 is the Editor of said newspaper and the petitioner no.3 is a journalist of the said newspaper. An article appeared in a free supplement called as "MIRROR BUZZ" of the daily newspaper "MUMBAI MIRROR" dated 4th February, 2006. The title of the said article is "MAKE A MARK" and the caption on the top of the article was "body beautiful". The said article was in respect of tattoos and the information was given in the said article about tattoos. In the said article, certain photographs of persons who have tattoo on their body were also published. One of the photographs was that of a lady who had tattooed herself on her back. The said tattoo depicted a Chinese dragon and a tiger. On the body of the tiger, long black stripes which are normally found on the body of the tiger were shown and certain words were inscribed. After the said article

was published, complaints were received by the Times Group stating that the word which was inscribed on the back of the lady was bearing the name of "Allah" which was a sacro-sanct word and also the beginning word of "Holy Quran' and therefore, by reproducing those Arabic alphabets, religious feelings of the complainant and other followers of Islam are deeply hurt. After having received the said letter, the petitioners immediately published a clarification in the daily "Mirror" dated 5th, 8th, 9th and 10th February, 2006 in which it was stated that the picture was downloaded from the Internet and neither the Editors of the board nor the Times Groups had anything to do with it as they had no intention to offend the religious feelings of any person and that seems the editor was not familiar with the Arabic language and that he was completely unaware that the tattoo carried the said word and therefore, an apology was published and it was clarified that this had happened inadvertently without their knowledge. Several letters were also received by the petitioners condemning them for publishing the said article.

3. It is submitted by the learned Counsel for the petitioners that the application was filed directly in the High Court since several complaints have been filed at various police stations. It was submitted that there was no bar to filing of the application directly in the High Court and therefore, it was submitted that the said application may be entertained by this Court and the petitioners may be protected by granting an order of anticipatory bail to them.

4. Learned APP, on the other hand, vehemently opposed the said application filed by the petitioners. He submitted that the complaint has been registered against the petitioners under the aforesaid provisions of the IPC and it was their duty to prohibit any untoward incident and there was possibility of law and order situation being created as a result of the publication of the said article in the newspaper. He submitted that the petitioners should approach the regular Court and seek bail before the competent authority.

5. I have given my anxious consideration to the submissions made by the learned Counsel for the petitioners and learned APP for the State. I have perused the article which appeared in the free supplement viz. "MUMBAI BUZZ" which was distributed alongwith the copy of daily "Mirror". The cover page of the said article is regarding a horse race in action. In the said free supplement, there are various advertisements which are printed. There is a cover story published under the caption "Day at the Races". After the cover story, there is an article on food. Then, there is an article on reviews on movies, games, music, books. There is also an article on auto’s and photographs of latest automobiles are published. After that there is an article on relationship. There is also an article on travel and finally, there is one article which is published under the caption "body beautiful" which is titled as "MAKE A MARK" and the said article begins with paragraphs which states as under :- "A tattoo is a sure way to brandish your cool quotient. Faye Remedios offers some pointers:. Below that the article begins by tracing the origin of the word

"tattoo" It further states various facts of the tradition and the present status. On the said two pages, the photographs of the people who have tattooed themselves are given. One such photograph is that of a lady who has tattoo on her back. On perusal of the photograph and the clarification which is immediately published by the next date, prima facie in my humble view, it does not appear to have been published either intentionally or otherwise, to hurt the religious sentiment of the people and the moment this was brought to the notice of the Times Group, immediately on the next day, the clarification and apology have been published. I am satisfied that prima facie offence punishable under Section 295 is not made out and therefore, a case is made out for grant of anticipatory bail.

6. It is no doubt true that normally convention or practice is followed by this Court that applications under Section 438 should initially be forwarded in the Sessions Court and only after the said application is rejected, the application should be thereafter lodged in

the High court. However, considering the very sensitive nature of the issues involved, it appears that the petitioners have approached this Court which is the highest Court in the State and which also has a concurrent jurisdiction under Section 438 of the Cr.P.C. to consider the application for anticipatory bail. Thus, there is no specific bar provided under the Act for not entertaining an application which is directly filed in this court and in an appropriate case, the High Court can entertain the said application which is filed directly in this Court.

7. In this view of the matter, the application is allowed and in the event of arrest of the petitioners in connection with the publication of an article in a free Supplement "MUMBAI BUZZ" dated February 4-10, 2006 which has been published under the caption "body beautiful" - "MAKE A MARK" as alleged for having committed an offence punishable under Sections 395, 295(A) and 153(A) of the IPC registered at any Police station in the State of Maharashtra, the petitioners may be released on bail in the sum of Rs.5000/- each with one or two sureties in

the like amount. However, it is made clear that the petitioners shall co-operate with the police in the investigation of the case.

8. The Government is directed that if more complaints are filed at different police stations, all these complaints should be clubbed together and should be investigated by the CID. The petitioners shall report to CID, Crime Branch as and when called. It is clarified that the petitioners may be called during reasonable hours i.e. between 11 a.m. to 5 p.m.

. Application is disposed of in the above terms.

. Certified copy expedited.

(V.M. KANADE, J.)